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Rachel Dombrowski, Clerk
Appellate Court of Maryland
5/31/2024 3:14 PM

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STATEMENT OF THE CASE

"In his Complaint, [Appellee Jeffrey Young, ('Young')] sought to quiet title by deed and/or by adverse possession, [to] real property…in Keedysville, Maryland, known as Parcels 2 and 3, as shown on Plat 2499." (E1125)[1] "In addition, Mr. Young sought to enjoin [Appellant Justin Holder, ('Mr. Holder,') and his wife, ('Mrs. Holder')] from entering Parcels 2 and 3." (E1126). "Young had purchased a quitclaim deed for Parcel 2 in 1993 from Jennifer Butts, [**subject to public ways of record.**]" (E1135). Mr. Holder purchased a quitclaim deed from Jennifer Butts in 2020 for her remaining lands, (E1140) which included Parcel 3.[2] (E1137). Appellant, Uncle Eddies Brokedown Palace LLC ("Uncle Eddies"), responded to Young's notice of complaint, (E1129) which **sought relief to Young's Parcel 2 & 3 ONLY.** (E1168)

Uncle Eddies, Mr. and Mrs. Holder, one and all, answered Young's complaint denying "the accuracy of Plat No. 2499," and they denied that Young's deeds provide him exclusive ownership of Parcel 2 and 3 because of "the priority of title by others, and/or their use as a public road." (E1128-29) Mr. Holder denied Young's claim that the last title owner of the area denoted as Parcel 3 on Plat No. 2499 is "unknown," or that Young had made "reasonable and good faith efforts to locate" the legal paper title owner of Parcel 3, because that information is readily found in the Land Records. (*Id.*)

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[1] This unreported Opinion is part of the record in this instant Appeal, and originates from the same action of *Young v Holder et al.*, **case C-21-Cv-20-371** below.

[2] Young, and his title expert, Christopher Joliet, Esq., conceded at trial that Young had no justification to claim legal paper title to Parcel 3 in his *verified* complaint. (E349)

A. Throughout the litigation there was no dispute whatsoever that Plat No. 2499 was not accurate, or that surveyor Frederic Frederick did not "set" some of his iron pins depicted on Plat 2499 on the legal paper title lines.

i. It is undisputed that surveyor George Nagel "found" the correct "planted stone" property marker that begins Young's western boundary described by Young's legal paper title, and that legal paper title line is not accurately depicted on Plat No. 2499.

The trial court discussed the defect in the title lines depicted on Plat No. 2499:

> The 1988 description does not delineate the property as Parcels 1, 2, and 3. Instead it describes the entire perimeter of the property as shown on Plat 2499. In the "being clause," the land is described as "all of Parcels 1, 2, and 3" as owned by the Wicklines and their predecessors, the Reeders. The Reeder-Wickline deed of 1966 describes the three parcels individually. (E1136)

There was never any dispute whatsoever that Parcel 1 on the Reeder-Wickline deed of 1966 begins at the "planted stone" that was "found" by surveyor George Nagel.[3] (E874 & 1495) Surveyor Frederic Frederick admitted the iron pins "set" by him in 1988 were not "set" on the title lines. (E1461-62) Plat No. 2499 was not an accurate depiction of Young's legal paper title. The Reeder-Wickline deed of 1966 included a "plat on folio 778." (E1296) Mr. Holder filed multiple pleadings to clarify the record, the "planted stone" depicted on the "plat on folio 778" was not in dispute. (E1130-31) Young opposed Mr. Holder without addressing the merits of Mr. Holder's claim. (E1161-63)

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[3] For the complete "unambiguous history" of the "planted stone" *see* "Appellant Justin Holder's Response to Appellee Young's Motion to Dismiss Appellee Deena Holder's Brief" filed in consolidated Appeal No.(s) 1145 & 1457, September term 2022 pp. 3-10. Young has conceded the "unambiguous history" of the "planted stone" to be true in his "Motion for Sanctions" filed in consolidated Appeal No.(s) 1145 & 1457, September term 2022 p. 3 ¶1. Uncle Eddies will save the ink of arguing a moot point.

At trial, the **ONLY competent evidence** locating the legal paper title lines of Parcel 1 was provided by way of expert surveyor George Nagel, and his description incorporated within Mr. Holder's quitclaim deed(s). (E893-96) There is no dispute whatsoever in the record that the western boundary of **Parcel 1 on the Reeder-Wickline deed of 1966 is 23.68 feet away** from the rear corner of lot 14 in the Stonecrest subdivision as depicted on Plat 8292, ("Stonecrest"),[4] and **25.71 feet away** from the "mag nail" located at the rear corner of Lot 9/10 in Stonecrest. (E1495) Plat No. 2499 depicts the **Parcel 1 property line 12.2 foot east of the western boundary of Parcel 3**, (E277-80) and the only competent evidence describes it as 23' away.

The record title line of the western boundary line of Parcel 1 is consistent with surveyor George Nagel's description in Mr. Holder's quit claim deeds. (E874-96) The first (1st) line on the Reeder-Wickline deed of 1966, begins at the "planted stone" "found" by surveyor George Nagel. (*Id.*) The "planted stone" "found" by surveyor George Nagel is also the property marker for the end of the third (3rd) line on deed "NN520,"[5] which is the deed that originally created the title lines describing Young's, the Appellant(s),' and Jennifer Butts' property. (E874 & 893-96)

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[4] Jennifer Butts was the successor in title to *inter alia* what is labeled "N/F Leonard L. Dorsey L. 659, F. 580" on Plat No. 2499. (E280) The record below reflects that Jennifer Butts sold land to what is now Stonecrest subdivision. (E1137)

[5] Deed dated September 10, 1832 and recorded at Liber N.N., folio 520 created the original tract of land west of the "Cost/Keedy" divisional line. Cost was predecessor in title to the Appellant(s) and Stonecrest, Keedy was predecessor in title to Young, and Benjamin Estes. (E874-99) The declaration of the planted stone marker is *sub judice* in Appeal No. 1428, September term 2022, and Appeal No. 61, September term 2023.

ii. Surveyor Frederic Frederick never approved the opinions Young's expert designation expressed, nor did Young discuss them with him.

Young filed an expert designation on October 25, 2021 that claimed surveyor Frederic Frederick would testify that he "Surveyed the subject properties – both Young's and Defendant's properties," and about "Mistakes made in Holder's survey done." (E1286-89) Upon discovery of Young's representation in his designation, on Nov 19, 2021, Frederic Frederick's counsel wrote to Young, demanding:

> Please also note that Mr. Frederick has never spoken nor communicated with Mr. Pembroke regarding this litigation, if ever. The opinions expressed in Mr. Pembroke's expert designation were never discussed, reviewed, or approved by Mr. Frederick.
>
> As a result, Plaintiff's expert witness disclosure designating Mr. Frederick as a retained expert witness, including Mr. Pembroke's opinions stated within this disclosure apparently on behalf of Mr. Frederick, **must be withdrawn from the docket in the next 2 business days**. (emphasis in original) (E1290)

On the same day, Young "withdraws the designation of Frederic Fredericks as an expert witness in this matter pursuant to the Designation of Expert Witnesses, filed October 4, 2021 and the Supplemental Designation of Expert Witnesses, filed October 25, 2021." (E1291) Mr. Holder showed the "planted stone" to Young when they walked the property on May 29, 2020 and/or March 24, 2021. (E206) In 1988, Young was provided with a complete title report to the property. (E207-9) It is unclear what testimony Young sought from Frederick, or what justification, if any, Young had to oppose Mr. Holder's request to declare the "planted stone" as the true title line.

iii. Relief outside of Parcel 2 & 3 depicted on Plat 2499 was "not appropriate," because Young waived that relief in his complaint.

At the start of a three day bench trial, in opening arguments, with no other notice provided to Appellant(s), Young requested the court quiet title to Parcel 1 in addition to Parcel 2 and 3. (E25) This court's May 26, 2023 Opinion of Honorable Justice Battaglia, (specially assigned as judge), in Appeal No.(s) 1145 & 1457 September term 2022 at p. 49 found that the trial court abused its discretion when it "granted relief not only to Parcels 2 and 3, but also as to Parcel 1, which was not appropriate because Parcel 1 was not a subject of the quiet title action." (E1168) Justice Battaglia further mandated that "[a]ccordingly, we shall remand the declaratory judgment for the trial judge to remove any reference to Parcel 1." (*Id.*) To be sure, Justice Battaglia ordered that the trial court shall "revise its declaratory judgment by removing any mention of Parcel 1." (E1182) The record is clear, Plat 2499 was not accurate, but unclear as to why Young waived any relief outside Parcel(s) 2 & 3.

B. Public roads over and through Parcel 2 and 3 were not at issue in this litigation.

Uncle Eddies denies Mr. Holder trespassed on Young's property, claiming he "lawfully acted on lands claimed by [Young]." (E1039) Two (2) weeks prior to trial:

> Mr. Holder wrote a letter to the court, in which he summarized the issues for trial, one of which involved "clouds on the title of subject properties":
>
> > 4. Outstanding Claims and clouds on the title of subject properties, not named but apparent from inspection of the Property and Public Record, including claims by the Local

> Government in which Defendants have requested redress. (Interlocutory Appeal pending).

At the pre-trial conference, the trial judge acknowledged the letter and issues Mr. Holder raised, including "number four, whether there are claims or clouds that are out there regarding public roads on [Parcels 2 or 3]." The judge specifically explained that the existence of public roads was a "legislative function" and that evidence of road usage was not going to be presented in the case:

> Let's go to number 4. And I sort of rename it or redescribe it as whether there are roads, town roads, county roads, that affect parcel 2 or parcel 3 that may traverse over the Young property. Separate from a private easement, these are government held roads. To me, that is not relevant in the case that we are having two weeks from now. I will not hear evidence on public roads. And the reason is if there are roads owned by the county or the town, whether those roads are open for use, whether they should be re-opened, whether they still exist, is a legislative function of government. It is not right now a judicial function and therefore we will not be discussing roads. (E1164)

Young could not prove Mr. Holder's use of Parcel 2 and 3 was unlawful, because the court below did not adjudicate the public roads across Parcel 2 and 3, or any easement by necessity to those public roads prioritizing the title of others.

C. Young conceded that Parcel 2 is burdened by public roads of record and he was not asking the court to quiet title and/or enjoin Appellant(s) from those roads.

On June 7, 2022, during a pre-trial conference held immediately before trial, Mr. Holder stated, "Parcel 2, Mr. Young has, I don't think there's any dispute that he's acquired or perfected his title to Parcel 2." (E1135) Young purchased a quit claim deed from Jennifer Butts in 1993, subject to public roads/ways of record. (E1498)

At trial, Mr. Holder asked Young "Are you aware on your Complaint, part of your request for relief that you enjoin us, Defendants, from the use of that public road?" (E88) The court never permitted Young to answer Mr. Holder's question. Instead, after a brief discussion, the court ruled that "well, whether [the complaint] says that or not, Mr. Pembroke has admitted to me that they are not taking the position you or Deena Holder are not permitted to drive on…a county road." (E89) Mr. Holder noted his objection and moved on. Young had conceded his right to injunction.

D. The only matter in controversy was adverse possession of Parcel 3, which was resolved in Young's favor, subject to public roads which were not being litigated.

The land located in between Parcel 1 and Stonecrest has been referred to as the "Gap," (E1241) which is approximately a 25 foot wide strip of land located immediately to the west of Parcel 1. (E1243) The court below found, and this court affirmed, that Young adversely possessed a 12.2 foot wide strip of that Gap when it:

> **ORDERED**, the western boundary of Parcel 3 as shown on Plat 2499 abuts and borders the eastern boundary of the Stonecrest development as shown on Plats 8292-93, as said plats are recorded in the Land Records of Washington County, Maryland. There is no additional strip of land or Gap between Parcel 3 and the Stonecrest development. (E1212)

Mr. Holder was litigating his right to possess a 25 foot wide Gap, and this court affirmed that Young had successfully trespassed on a 12.2 foot wide strip of the Gap for a period of 20 years or greater, which barred Mr. Holder, (or his privities, Stonecrest and/or Jennifer Butts), by limitations from ejecting Young. (E1212) There is no competent evidence in the record that provides Young with rights to exclude

Appellant(s), or others, from public roads, or anywhere other than the 12.2 foot wide strip within the Gap Young adversely possessed.

E. Young knew Plat No. 2499 was incorrect because Young was notified by Western Maryland Title and his title attorney prior to purchase, and Young was provided a complete title report.

Prior to his purchase, a report from Western Maryland Title Services notified Young (E207-9) that "The land records for Washington County, Maryland do not disclose...what right, title and interest Roy G. Reeder and Mae M. Reeder, his wife may have had with respect to Parcel Nos. 2 and 3 in the deed recorded in Liber 434, folio 776, one of the land records for Washington County, Maryland." (E1233).

Christopher Joliet not only served as Young's title expert at trial, but also as Young's title attorney in 1988. (E1335) Prior to closing on the 1988 purchase, Joliet advised Young of "a serious title flaw" concerning this transfer, and "despite this serious problem, you are willing to accept what title they can convey at this time." (*Id.*) Joliet confirmed that Young "intend[s] to address the problem" himself and that the title insurance "will also take exception to this matter." (*Id.*) Young acknowledged these risks by placing his signature on the August 3, 1988 letter. (*Id.*). Young's title expert, Christopher Joliet, testified: "We know it wasn't in his title chain." (E348-50). When asked, "When the deed was transferred from Mr. Wickline to Mr. Young, what evidence do you have that Mr. Wickline had to good title to Parcel 3?" Mr. Joliet responded, "I don't have any." (*Id.*).

Mr. Holder showed the "planted stone" to Young when they walked the property on May 29, 2020 and/or March 24, 2021. (E206) In 1988, Young was provided with a complete title report to the property. (E207-9) The record is unclear as to what good faith reasons, if any at all, Young had to claim record title to Parcel 3.

F. <u>The Trial Court's Order and Injunction on remand.</u>

The Trial Court issued its Order(s) and Opinion on September 7, 2022, finding that Young owned Parcel 1, 2 and 3, and enjoining Appellant(s) from entering Parcel 1, 2 and 3. (E1143-44)

Appellant(s) timely appealed from the September 7, 2022 final orders, and this court vacated the trial court's declaration as to Parcel 1. (E1016-19) Specifically this court found Young limited his relief to Parcels 2 and 3, and mandated the trial judge remove any reference/mention of Parcel 1. (*Id.*) Young's fatal flaw in pleading was now apparent. Young had adversely possessed his 12.2 foot wide strip of land in Parcel 3, however that 12.2 foot strip is only about half of the Gap that surveyor George Nagel located, and described in his survey certificate. (E1495) Indeed, the trial court understood this flaw opining "Parcel 3 is exactly where Plat 2499 says it is, it abuts the Stonecrest development, and, if anything, Parcel 3 is bigger than Plat 2499 shows." (E1198) Mr. Holder's deed(s) demonstrate that Young, by no fault other than his own ignorance, failed to prove his adverse possession of "(c) a separate area of land abutting Parcel 3" (E1184) to the east. Young limited his claim to 12.2 foot. (E1295)

After this court vacated the trial court's September 7, 2022 Order in part, the trial judge refused to follow the mandate and stubbornly continued to abuse its discretion by providing Young inappropriate relief as to Parcel 1. (1213) Appellant(s) Mr. Holder and Uncle Eddies noted a timely appeal. (E1259-62)

QUESTIONS PRESENTED

A. Did the trial court abide by this court's mandate to vacate its judgement and remove any mention/reference of Parcel 1 from its declaration when it enjoined Appellant(s) from Parcel 1?

B. Is Appellee Young entitled to exclude Appellant(s) from their lawful use of public roads and ways, that undisputedly cross his Parcel 2 and/or 3?

C. If Appellee is not entitled to enjoin Appellant(s) from public roads and ways, did the trial court err or abuse its discretion by issuing an injunction without first determining the merit of Appellant(s) claimed rights in public roads and ways?

STATEMENT OF FACTS

I. Young sold part of Parcel 2, as it is depicted on Plat 2499, to Washington County, Maryland to be used as a public road. (E87)

II. Young's quit claim deed for Parcel 2 is subject to right of ways, streets, reservations and easements of records. (E1498)

III. The 1974 Town of Keedysville Comprehensive Plan "Map 4" depicts a "Local" road, (the "1974 Comp Plan road"), in approximately the same area as what Young claims as his parcel 2 on plat 2499, and said Map 4 was derived

from mapping done by the U.S. Geological survey that was "field checked." (E1072)

IV. The 1936 Washington County Road Atlas depicts a public road in the area that Young claims as his Parcel 2 and 3. (E1060, 1068, 1071-72, 1079 & 1110)

V. Local historian, Ted Ellis, wrote a book that discussed the "Road to Keedysville" in detail as a route that General Braddock and George Washington traversed through what is now Keedysville, in 1755. Ted Ellis placed red tracing over what he described as the "Road to Keedysville" in his book, onto the 1936 Road Map of Washington County, (the "1936 Atlas"). The same road Ted Ellis placed red tracing over is also designated 19-06 on the 1936 Atlas. (E1368-1429)

VI. Mr. Holder testified as to his, and others, use of roads and ways over Young's Parcel 2 and 3 beginning in the late 1980's. (E509-10)

VII. The Town of Keedysville named "Harris lane" on April 10, 1961, and described the road as "running southeast from Main Street parallel to the railroad." (E1069-70)

VIII. The Washington County Attorney discussed the public roads originally at issue in this litigation in a December of 2020 letter to Mr. Holder. (E1080) When asked if the County intended to abandon or repair said "public roads," the County Attorney declined to make that determination. (*Id.*)

IX. Harris lane, Road to Keedysville and/or the 1974 Comp Plan road, (the "public roads of record"), have never been closed, abandoned, terminated or otherwise extinguished by the Town and/or County government. (E1345-67)

X. Young has acquiesced, (in accordance of RP § 14-619), to the public roads of record that were actually known to him by Mr. Holder's pleadings, and the public record, well before amendment of right in this case. (E1020-28)

XI. Young has expressly limited his claim of adverse possession, of what he claims as his parcel 3 on plat 2499, to a 12.2 foot wide strip of land. (E1020-28)

XII. Young conceded at trial Parcel 3 is only twelve (12) foot wide. (E102)

XIII. Surveyor George Nagel described a 25 foot Gap of Remaining lands beginning at a "planted stone" he "found," that marks the beginning of Young's parcel 1, and the end of deed NN520 line three (3). (E874-96 & 1495)

XIV. Young knew he had no claim whatsoever to legal paper title of what he claims as his parcel 3 on his plat 2499, when he filed his case 371, but he alleged that he did have legal paper title in his *verified* pleadings anyway. (E317-20 & 349)

XV. The property claimed by Uncle Eddies, and the Remaining lands of Cost do not have lawful access to a public road that is depicted on Plat 8292. (E1501)

XVI. Young conceded at trial that his complaint did not seek to quiet title to, or enjoin Appellant(s) from "public roads of record." (E87-89)

XVII. Young initially claimed to "have zero knowledge of" the road, (E79-80) and then after prior testimony was introduced, Young recalled "talking about a road

with Mr. Holder." (E84) Young discussed that he had known of the claims of public roads in his prior depositions. (E1311-29 & 1472-77)

LEGAL STANDARD(S) and ARGUMENT(S)

"Ordinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal." Md. Rule 8-131(a).

"A court's decision to grant or deny declaratory relief is generally assessed under an 'abuse of discretion' standard." *Falls Road Cmty. Ass'n v. Baltimore Cnty.*, 437 Md. 115, 135 (2014). "An abuse of discretion occurs 'where no reasonable person would take the view adopted by the [trial] court,' 'when the court acts without reference to any guiding rules or principles,' or when the court's 'ruling is clearly against the logic and effect of facts and inferences before the court.'" *State v. Alexander,* 467 Md. 600, 620 (2020) (quoting *Alexis v. State,* 437 Md. 457, 478 (2014)). The trial court's "factual finding is clearly erroneous if there is no competent and material evidence in the record to support it." *Hillsmere Shores Improvement Ass'n v. Singleton*, 182 Md. App. 667, 690 (2008) (internal citations omitted).

When the court's decision to grant or deny the request for injunctive relief is based on consideration of a purely legal question, this Court reviews the court's decision on the legal question *de novo,* without deference. *See J.L. Matthews, Inc. v.*

Maryland-Nat'l Capital Park & Planning Comm'n, 368 Md. 71, 94 (2002). *See also Hoang v. Hewitt Ave. Assocs., LLC*, 177 Md. App. 562, 576 (2007).

I. THE TRIAL COURT IGNORED THIS COURT'S MANDATE AND GRANTED YOUNG RELIEF OUTSIDE PARCEL 2 & 3 ANYWAY.

This court mandated the "CASE REMANDED TO THE CIRCUIT COURT FOR WASHINGTON COUNTY FOR THE PURPOSE OF ENTERING A DECLARATORY JUDGMENT CONSISTENT WITH THIS OPINION RELATIVE TO PARCEL 1." (E1016-19) In this court's opinion it determined that "Parcel 1 was not a subject of the suit." (E1168) "In the Judge's Order, however, he granted relief not only to Parcels 2 and 3, but also as to Parcel 1, which was not appropriate because Parcel 1 was not a subject of the quiet title action." (*Id.*) "Accordingly, we shall remand the declaratory judgment for the trial judge to remove any reference to Parcel 1." (*Id.*) To be sure, this court ordered that "we shall remand the case to the circuit court, however, to revise its declaratory judgment by **removing any mention of Parcel 1**." (emphasis added) (E1182)

After this court's remand, on June 14, 2023 the trial court:

> ORDERED, Defendants Justin Holder, Deena Holder, Uncle Eddie's Brokedown Palace, LLC, and any member or agent thereof, be and are hereby permanently enjoined from entering **Plaintiffs land as described in the Opinion** and this Order. (emphasis added) (E1213)

However in the "FACTS" section of its June 14, 2023 **revised** Opinion describes Plaintiff's land as Parcel 1, 2 & 3. (E1185-87) The trial court ignored the clear and concise mandate of this court to "remove any reference/mention of Parcel 1."

The trial court abused its discretion and/or erred in law. "Upon receipt of the mandate, the clerk of the lower court shall enter it promptly on the docket and the lower court shall proceed in accordance with its terms." Md. Rule 8-606(e) **Shall is mandatory not directive.** *Cf. Uthus v. VALLEY MILL CAMP*, 472 Md. 378, 246 A.3d 1225, 1236-38 (2021). "An appellate court may enforce its judgment by appropriate order." Md. Rule 8-611(a)

This court has the authority to mandate the trial judge's Orders. "*Compare La Buy v. Howes Leather Co.,* 352 U.S. 249, 77 S.Ct. 309, 1 L.Ed.2d 290 (1957) (writ will issue where district court judge shows persistent disregard of rules of civil procedure), and *United States v. United States Dist. Ct.,* 334 U.S. 258, 68 S.Ct. 1035, 92 L.Ed. 1351 (1948) (writ will issue to compel obedience to appellate court's mandate)." *In re Petition for Writ of Prohibition*, 312 Md. 280, 328, 539 A.2d 664 (1988).

If injunction is appropriate at all, it must be specific, and expressly limited to Parcel 2 and/or 3. The trial court lacks discretion to deviate from this court's mandate.

II. THE INJUNCTION IS INCONSISTENT WITH MD RULE 15-502(e), AND THE MERITS OF PUBLIC ROADS WERE NEVER DETERMINED.

An injunction is "a writ framed according to the circumstances of the case commanding an act which the court regards as essential to justice, or restraining an act which it esteems contrary to equity and good conscience. Thus, injunctive relief is a preventative and protective remedy, aimed at future acts, and is not intended to redress past wrongs." *El Bey v. Moorish Science Temple of America,* 362 Md. 339, 353 (2001) (quoting *Maryland Commission on Human Relations v. Downey Communications*, 110

Md. App. 493, 515 (1996)). An injunction "must be sufficiently specific to give a defendant a fair guide as to that expected of him." *Harford County Educ. Assn v. Board of Ed. of Harford County,* 281 Md. 574, 587 (1977). To serve that policy, "[a]n order granting an injunction shall (1) be in writing, (2) be specific in its terms, and describe in reasonable detail, and not by reference to the complaint or another document, the act sought to be mandated or prohibited." Md. Rule 15-502(e). *See also Joy v. Anne Arundel County,* 52 Md. App. 653, 663 (1982) (vacating an injunction ordering the defendant to "restore the property to its original topography" as "too vague and overbroad to comply with" [the predecessor to Md. Rule 15-502(e)]); *Franzen v. Dubinok,* 45 Md. App. 728, 734 (1980) (An injunction was defective because it "lack[ed] specific terms and reasonable detail[.]"); *Chesapeake Outdoor Enterprises, Inc. v. Mayor and City Council of Baltimore,* 89 Md. App. 54, 78 (1991) (noting that "an order granting an injunction should be sufficiently specific to give a defendant a fair guide as to what is expected") (cleaned up) The inconsistency between this court's mandate and the trial court's revised order, relative to Parcel 1 and public roads, leave Appellant(s) without a fair guide in specific terms to understand what is expected.

A. The trial court's June 14, 2023 Injunction describes the act sought to be prohibited by reference to another document, the Opinion.

The Order states that Appellants are "enjoined from entering Plaintiffs land as described in the Opinion," (E1213) and the "Opinion" is unambiguously another

document. Moreover, "Plaintiff's land" is described as 10.36 acres in the Opinion, and Parcel 1, claiming to be ten (10) acres of "Plaintiff's land," was not the subject of suit.

B. <u>The trial court's June 14, 2023 Injunction is ambiguous.</u>

To the extent Young may argue the Opinion is incorporated into the trial court's Order, then the trial court's Opinion contains mention and/or reference to Parcel 1, which this court determined is inappropriate, and must be removed, or stricken. If the trial court desires to incorporate its Opinion into its declaratory judgment by reference, then its Opinion must be consistent with the mandate, and not mention Parcel 1.

C. <u>The Merits of Public Roads were never determined at trial.</u>

The Appellate Court affirmed that public roads were not litigated because they were a legislative function of government.[6] (E1164) Therefore the declaratory judgement consistent with this court's opinion could not terminate the "public roads"[7] of record that pass over Young's Parcel 2 and/or 3 on Plat 2499. Indeed, Young had substantial notice of Appellant(s) evidence of those "public roads," and that the government had never closed, abandoned, terminated or extinguished its rights therein those "public roads." (E1345-67) Young chose not to litigate the claims of "public

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[6] MD. Real Property Code § 14-619 provides that "(a) A judgment in an action under this subtitle does not affect a claim in the property or part of the property of any person who was not a party to the action, if, at the time the action was commenced:

(1) The claim was of record; or

(2) The claim was actually known to the plaintiff or would have been reasonably apparent from an inspection of the property."

[7] The public roads at known as "Harris lane," the "Road to Keedysville," and the "1974 Comprehensive Plan Local Connector Road," have never been closed, abandoned, terminated or extinguished. *See* Facts section *supra.*

roads" of record that were actually known to him. In so declining, Young cannot possibly meet his burden to exclude Appellant(s) and/or their invitees from using those "public roads" of record actually known to him by evidencing a continued trespass. *See Brown v. Smith*, 173 Md. App. 459, 487 (2007) (holding that an injunction is not necessary when there is no evidence of a continued trespass).

In fact, Mr. Holder's initial examination of Young at trial sought to determine the merits of Young's injunction as to public roads. (E87-89) Before Young could answer, the trial court determined that Young conceded he did not seek to enjoin Appellant(s) from access to public roads. (*Id.*) Therefore, the trial court could not determined the merits of the injunction, because it declined to determine the merits of "public roads." *See NCAA v. Johns Hopkins Univ.*, 301 Md. 574, 483 A.2d 1272 (1984) (recognizing the importance of a determination on the merits with respect to the issuance of a permanent injunction). *Cf. Eberly v. Balducci,* 61 Md. App. 80, 84-88 (1984) (holding that a second petition for injunctive relief could not be barred as *res judicata* because the "substantive issues of th[e] dispute ha[d] not been decided" in the original hearing) Inversely, a request to dissolve an injunction where the substantive issues of "public roads" were not decided, also would not be *res judicata.*[8] Mr. Holder's action was in fact lawful, *see* MD. Natural Resources Code Ann. § 5-406.

[8] Md. Rule 15-502(f) provides "A party or any person affected by a preliminary or a final injunction may move for modification or dissolution of an injunction." Young should agree that to the extent dissolution of the injunction is not properly at issue, this court could decide that issue to avoid the expense of another appeal.

D. The trial judge led Appellant(s) to believe that the Merits of Public Roads would be decided in *Holder v Morral*, Case C-21-CV-21-420.[9]

During the pre trial hearing the trial court ruled that it would not receive evidence of public roads. (E87-89) During trial Mr. Holder was examining Young about the public roads, and asked "You aware any public documents that people in Stonecrest are objecting to a right of way of their property?" THE COURT interjected, reminding Appellant(s) that "[t]here's an entire lawsuit about that Mr. Holder." (E92) *Holder v Morral,* **Case C-21-CV-21-420** places the "public roads" at issue, and Appellant(s) expected to litigate those rights in that case based on the trial court's representations.

The record in this case contains a plethora of competent evidence that the "public roads" exist, and neither the Town of Keedysville, Maryland, and/or Washington County Maryland have any records that indicate the "public roads" have been closed, abandoned, terminated or otherwise extinguished. *See* Facts section *supra.* Young failed to place any evidence in the record that is contrary to Appellant(s) position on "public roads." Without further proceedings on "public roads," Young can not meet his burden to be granted an injunction, because the record reflects Parcel 2 and/or 3 are subject to said "public roads." *See Cooper v. Sanford Land Co.*, 224 Md.

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[9] **Appeal No. 1428, September term 2022** is currently *sub judice* in this court. Uncle Eddies was never served in **Case C-21-CV-21-420**, but is listed as a Defendant in that litigation. Uncle Eddies did not oppose Mr. Holder's Motion to Consolidate **Appeal No. 1428** with this instant action as it relates to **Appeal No.(s) 1145 and 1457, September term 2022**, but this court declined to do so. R

263, 266-67, 167 A.2d 602 (1961). (The court decided to "remand the case, without affirmance or reversal, for further proceedings, leaving the questions open," prior to review of an injunction, when the record was limited to "the overgrown condition of the road and the size of several trees in the roadbed…[and] some evidence that the purported roadbed had been used as a bridle path.") Indeed, Ted Ellis's book explains that the "Road to Keedysville" was "the foot and bridle path from William Park's 1731 Park Hall. The petition to the Court in 1760 confirms it as a horse path at that date." (E1368-69)

As the now Supreme Court of Maryland observed in *Boyds Civic Ass'n v. Montgomery County Council,* 309 Md. 683, 691 (1987), the existence of ripeness, in some instances, is a matter of degree. If a court is satisfied that the "ripening seeds"[10] of a controversy exist, then the court may adjudicate the matter at the outset of the controversy. *Id.* The trial court and this court have decided the issue of "public roads" were not ripe, and are not being litigated in this proceeding. (E1164) The issue of

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[10] The Court explained in *Boyds*, 309 Md. at 691, that the term "ripening seeds" means:

> [N]ot that sufficient accrued facts may be dispensed with, but that a dispute may be tried at its inception before it has accumulated the asperity, distemper, animosity, passion, and violence of the full-blown battle which looms ahead. It describes a state of facts indicating 'imminent' and 'inevitable' litigation, provided the issue is not settled and stabilized by a tranquilizing declaration.

Mr. Holder's Bill *Quia Timet* sought to address these "ripening seeds," prior to the full blown battle which inevitably looms ahead. The trial court, and this court rejected that effort, and the issue of "public roads" should proceed in *Holder v Morral.*

"public roads" is *sub judice* in *Holder v Morral,* **Case C-21-CV-21-420,** and should be litigated in that suit. (E92)

The trial court led Appellant(s) to believe that "public roads" would not be litigated in this case. Appellant(s) relied on the trial court's representations, and did not submit their evidence of "public roads" in abeyance of the trial court. Young, on notice by the pleadings and record that Appellant(s) claim rights of the public, did not protest and acquiesced to the trial court's order barring public roads from the issues at trial. Young knew he could no longer demonstrate his exclusive rights to Parcel 2 and 3, and meet his burden to enjoin the Appellant(s) from "public roads." Appellant(s) should not be penalized for their reliance and abeyance on the trial court, by being unfairly excluded from the "public roads" of record. Young should not be rewarded for his ignorance, waiver, bad faith and failures in pleading.

III. AN INJUNCTION FROM PUBLIC ROADS AND WAYS WOULD FURTHER AN ACT OF INVERSE CONDEMNATION OF APPELLANTS' PROPERTY, WITH NO DUE PROCESS OF LAW.

The trial court, and this court have ruled that public roads are a legislative, not a judicial function of government. (E1164) This ruling is consistent with Maryland law summarized by Maryland's highest court in *County Comm'rs v. Schrodel:*

> Ordinarily the question of whether a proposed [location] is required by public necessity is legislative rather than judicial.... [T]he decision ... as to the public necessity for taking particular property is not subject to judicial review unless [the] decision *is so oppressive, arbitrary or unreasonable as to suggest badfaith.* (emphasis supplied),

320 Md. 202, 216, 577 A.2d 39, 46 (1990) (quoting *Murphy v. State Roads Comm'n,* 159 Md. 7, 15, 149 A. 566, 570 (1930)) (collecting cases).

The record in this case contains competent evidence that the "public roads" exist, and neither the Town of Keedysville, Maryland, and/or Washington County Maryland have any records that indicate the "public roads" have been closed, abandoned, terminated or otherwise extinguished. *See* Facts section *supra.*

A. This court rejected Mr. Holder's argument of "*Estoppel* by 'affirmative misconduct'" in Appeal No. 1145, September term 2022.

"Cash-N-Go postulates that an estoppel claim against the State may succeed where it does not threaten state resources or public policy and the claimant can prove the 'traditional' elements of estoppel in addition to some 'affirmative misconduct.' [*Deese v. Esper,* 483 F. Supp. 3d 290 (D. Md. 2020)] at 316 (quoting *Angeles v. District Director*, 729 F. Supp. 479, 485 (D. Md. 1990))." *IN THE MATTER OF CASH-N-GO, INC.*, No. 1012, September Term, 2021 (Md. Ct. Spec. App. Dec. 1, 2022). "The law of estoppel against the government is very narrow and can lead to harsh results... Incorrect advice or oral misrepresentations do not rise to the level of affirmative misconduct.... In addition, the record does not indicate that the [Public] knew all the material facts pertaining to petitioner's circumstances, which is an essential common law element in the estoppel doctrine." *Angeles v. District Director*, 729 F. Supp. 479, 485 (D. Md. 1990) (cleaned up).

The trial court's Opinion at section titled "A Note on Public Roads," states:

> Due to their involvement in the discovery stage of this case, the County and Town governments are aware of Mr. Holder's belief that public roads exist over Plaintiffs property. However, no government has filed suit or taken any action to open any road on Plaintiff's property or otherwise objected to Plaintiff's ownership free of public roads. (E1210)

This court rejected Mr. Holder's argument that the trial court made the determination of estoppel by the County and/or Town governments failure to act. (E1163-65) Indeed, this court's decision is supported by Md. Ann. Code Real Property § 14-619. Young was aware of Appellant(s) claims of "public roads" which were actually known to him.

B. The Town and County governments must act to protect the rights of Appellant(s) property, or Appellant(s) property is devalued.

The now Supreme Court of Maryland explains the cause of action known as Inverse Condemnation in *Litz v. Maryland Dept. of Environment*:

> An inverse condemnation claim is characterized as a shorthand description of the manner in which a landowner recovers just compensation for a taking of his property when condemnation proceedings have not been instituted. Essentially, a plaintiff may recover the value of property which has been taken in fact by the governmental defendant, even though no formal exercise of the power of eminent domain has been attempted by the taking agency. The Supreme Court explains that a government is liable for inverse condemnation if it forc[es] some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole. (Cleaned up)

446 Md. 254, 266-274 (2016). "Accordingly, an inverse condemnation claim may arise ordinarily in multiple ways:

> [T]he denial by a governmental agency of access to one's property, regulatory actions that effectively deny an owner the physical or economically viable use of the property, conduct that causes a physical invasion of the property, hanging a credible and prolonged threat of condemnation over the property in a way that significantly diminishes its value, or, closer in point here, conduct that effectively forces an owner to sell.

Coll. Bowl, Inc., 394 Md. at 489, 907 A.2d at 157. Therefore, we hold, as a matter of Maryland law, that an inverse condemnation claim is pleaded adequately where a plaintiff alleges a **taking caused by a governmental entity's or entities' failure to act, in the face of an affirmative duty to act.**" (emphasis added) *Id.* at p. 267.

Mr. Holder's argument, and/or the trial court's finding of "*Estoppel* by 'affirmative misconduct,'" gives rise to the claims discussed in *Litz.* This court's Opinion declined to affirm Mr. Holder's proposition, and therefore Young is not entitled to enjoin Appellant(s) from public roads, that cloud the title of Parcel 2 & 3.

C. Appellant(s) should be entitled to due process of law, and a jury must access damages if they are to be enjoined from the "public roads."

The now Supreme Court of Maryland holds that "[w]ithout evidence" the condition is "immediately injurious to the health and safety of the public, or is otherwise immediately needed for public use" the legislature must "offer[] a property owner the full process to which he or she is constitutionally due, via the exercise of the regular condemnation power." *Baltimore v. Valsamaki*, 397 Md. 222, 916 A.2d 324, 356 (2007). When the taking is challenged, the questions for the court to decide are limited to (i) whether there is any necessity whatsoever to justify the taking, or (ii)

whether the decision of the commission is so oppressive, arbitrary or unreasonable as to suggest bad faith. *State Roads Comm. v. Franklin,* 201 Md. 549, 95 A.2d 99 (1953); *Johnson v. Consolidated Gas, Electric Light & Power Co.,* 187 Md. 454, 50 A.2d 918 (1947); *Murphy v. State Roads Comm.,* 159 Md. 7, 149 A. 566 (1930).

Uncle Eddies was not afforded the opportunity to litigate the "necessity" of the taking of its access to "public roads," or how unreasonable, arbitrary and oppressive the decision to terminate the "public roads" of record would be. *See* section II(D) *supra.* (Appellant(s) were led to believe this issue was to be litigated in *Holder v Morral.*) The unjust result is that Uncle Eddies would be deprived of a property interest without procedural or substantive due process, primarily notice. This Court has long held that procedural due process requires that litigants must receive notice, and an opportunity to be heard. *See Ulman v. Mayor and City Council of Baltimore,* 72 Md. 587, 591-92, 20 A. 141, 141-42 (1890) (explaining that "notice ... is required to constitute due process of law" in cases involving a deprivation of a property interest).

D. An Injunction from "public roads" would be inconsistent with the Town of Keedysville Subdivision Ordinance, and other law.

The Town of Keedysville's "subdivision ordinance" at §1.02 states: "The purpose...to promote public health, safety and general welfare... [and] implement requirements of the State of Maryland under Article 66B.." Maryland's Article 66B[11]

[11] Article 66B has now been codified as Md. Ann. Code Land Use.

explains that "'Local jurisdiction' means a county or municipal corporation and the territory within which its powers may be exercised." Article 66B at §1.00(g) "'Plan' includes a general plan, master plan, comprehensive plan, or community plan adopted in accordance with §§ 1.04 and 3.01 through 3.09 of this article." *Id.* at §1.00(h)(2) "In this section, 'action' means:...(2) A requirement under § 9–505(a)(1) of the Environment Article...(3) A required finding under §§ 9–506(a)(1) and 9–507(b)(2) of the Environment Article." Article 66B at §1.02(a) "This section applies to the following:...(2) §§ 9–505(a)(1), 9– 506(a)(1), and 9–507(b)(2) of the Environment Article (Water and sewer plan review)..." *Id.* at §1.02(b) "... that an action be 'consistent with' or have 'consistency with' a comprehensive plan, the term shall be defined to mean an action taken that will further, and not be contrary to, the following items in the plan: ...(5) Development patterns; (6) Land uses..." *Id.* at §1.02(c) "...shall enact, adopt, amend, and execute a plan...a planning commission shall include: (i) A transportation plan element...(iii) A water resources plan element that:1. Identifies drinking water and other water resources that will be adequate for the needs of existing and future development proposed in the land use element of the plan...; 2. Identifies suitable receiving waters and land areas to meet storm water management and wastewater treatment and disposal needs of existing and future development proposed in the land use element of the plan..." *Id.* at §1.04(a). Article 66B at §4.09 requiring:

> On or before July 1, 1997, and subsequently at intervals of no more than 6 years which correspond to the plan revision under § 3.05(b) of this

> article, a local jurisdiction shall ensure that the implementation of the provisions of the plan that comply with §§ 1.01 and 3.05(a)(4)(vii) and (ix) of this article are achieved through the adoption of applicable zoning ordinances and regulations, planned development ordinances and regulations, subdivision ordinances and regulations, and other land use ordinances and regulations that are consistent with the plan.

The subdivision ordinance expressly restricts subdivided lot(s) being offered for sale "until the improvements required in connection with the subdivision have either been constructed or guaranteed as here in after provided…" Plat 8292 could not have been lawfully approved without providing Appellant(s) with lawful access and easements for mandatory utilities according to the comprehensive plan. (E656-57)

"'The nine most terrifying words in the English language are, "I'm from the government and I'm here to help."'— Ronald Reagan, 40th President of the United States, News Conference (12 August 1986)." *Litz v. Maryland Dept. of Environment,* 131 A.3d 923, 924 446 Md. 254 (2016). Mr. Holder asked the court below: "Well, Your Honor, if it's going to be your position that you're going to overrule or sustain an objection if I asked the town of Keedysville if it's their intention to take property rights or if they provided just compensation on proving the plat [8292], I don't know that I need to call the town of Keedysville." (E0506) The court responded: "My sustaining of the objection is I don't see how that is relevant to the issues that are before me in this case." (E0506) Appellant(s) again relied on the trial court that "public roads," and utilities easements were not being litigated in this case. (E1164)

Uncle Eddies' parcel it bought in 2018, (E1187) is adjacent to the brand new Stonecrest development built out in 2018. (E1188) Both are in Town limits with existing water and sewer allocations on the Comprehensive Plans. (E0527 & E0661-9) The subdivision ordinance requires that an action be 'consistent with' or have 'consistency with' a comprehensive plan, and not be contrary to Development patterns or Land uses, (*see supra.*) MD. Environment Code Ann. §§ 9-659 & 9-661 provide that the government "shall connect the water system or sewerage system to any parcel" in the sanitary district. The Town and County's failure to provide a mandatory and ministerial governmental function in connecting water and sewer to existing improved parcels in w1/s1 existing water and sewer zones (EE0527 & E0658-64) is not within its discretion. If Plat 8292-93 did not provide access and Utilities for Uncle Eddies it would be deemed an illegal subdivision. This court, and the court below declined to adjudicate that public policy, which express purpose is stated in the subdivision ordinance as to"promote public health, safety and general welfare," (*see supra.*)

CONCLUSION

If this court were to affirm the injunction without adjudication of public roads, it would be affirming an inverse condemnation of Appellant's property rights through the doctrine of estoppel by affirmative act of government. Young must demonstrate to this court what duty, if any, the government had to appear and defend public rights of record that Appellee Young willfully and knowingly failed to join in his suit.

Young can not make such a showing because RP § 14-619 suggest that the government had no such duty. Young can not argue that he was ignorant to the public rights of record because the record reflects that Appellant(s) and the court notified him repeatedly of those rights.

The trial court's "Opinion" discusses "facts" and makes "findings" that were not "necessary to the judgement" and/or "fully and fairly litigated." The Opinion could be stricken in its entirety, without any impact on Young's declaration as to Parcel 2 and 3.

Appellee Young can not meet his burden to be afforded relief by way of injunction over Parcel 2 and 3, without evidence of the public roads, and their merit being determined. Young's injunction must be dissolved.

Alternatively, the trial court must amend its order, and limit the injunction to:

> ORDERED, Defendants Justin Holder, Deena Holder, Uncle Eddie's Brokedown Palace, LLC, and any member or agent thereof, be and are hereby permanently enjoined from entering Parcel 2 and 3 at depicted on Plat 2499, subject to Public rights in Dogstreet road, the Road to Keedysville, Harris lane, the 1974 Town of Keedysville, Maryland's Comprehensive Plan local connector roads, and any easement by necessity of egress and ingress to property owned by Jennifer Butts and/ or Stonecrest LLC; and

the language "ORDERED, no other person has any ownership interest or claim in Parcel 2 or Parcel 3" must be removed, because Young declined to adjudicate the public rights of record, and/or easement by necessity that land is subject to.

CITATIONS AND TEXT OF PERTINENT STATUTE AND RULES

A. Rule 15-502 - Injunctions-General Provisions

(e) Form and Scope. The reasons for issuance or denial of an injunction shall be stated in writing or on the record. An order granting an injunction shall (1) be in writing (2) be specific in terms, and (3) describe in reasonable detail, and not by reference to the complaint or other document, the act sought to be mandated or prohibited.

(f) Modification or Dissolution. A party or any person affected by a preliminary or a final injunction may move for modification or dissolution of an injunction.

B. Rule 8-131 - Scope of Review

(a) Generally. The issues of jurisdiction of the trial court over the subject matter and, unless waived under Rule 2-322, over a person may be raised in and decided by the appellate court whether or not raised in and decided by an trial court. Ordinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.

C. Rule 8-606 - Mandate

(e) Effect of Mandate. Upon receipt of the mandate, the clerk of the lower court shall enter it promptly on the docket and the lower court shall proceed in accordance with its terms. Except as otherwise provided in Rule 8-611(b), the assessment of costs in the mandate shall not be recorded and indexed as provided by Rule 2-601(c).

D. Rule 8-611 - Enforcement

(a) By an Appellate Court. An appellate court may enforce its judgment by appropriate order.

E. MD. Real Property Code Ann. § 14-619:

(a) A judgment in an action under this subtitle does not affect a claim in the property or part of the property of any person who was not a party to the action, if, at the time the action was commenced:

(1) The claim was of record; or

(2) The claim was actually known to the plaintiff or would have been reasonably apparent from an inspection of the property.

F. MD. Natural Resources Code Ann. § 5-406:

(b)(2) A tree may be cut down and removed by an abutting landowner for the landowner's own use without first obtaining a permit if the tree is standing within the right–of–way of a public road which has not been surfaced with either stone, shell, gravel, concrete, brick, asphalt, or other improved surface.

G. Article 66B - Land Use §1.00

(g) "Local jurisdiction" means a county or municipal corporation and the territory within which its powers may be exercised.

(h) (1) "Plan" means the policies, statements, goals, and interrelated plans for private and public land use, transportation, and community facilities documented in texts and maps which constitute the guide for the area's future development.

(2) "Plan" includes a general plan, master plan, comprehensive plan, or community plan adopted in accordance with §§ 1.04 and 3.01 through 3.09 of this article....

(l) (1) "Subdivision" means the division of a lot, tract, or parcel of land into two or more lots, plats, sites, or other divisions of land for the immediate or future purposes of selling the land or of building development.

(2) (i) "Subdivision" includes resubdivision.

(ii) As appropriate to the context, "subdivision" may include either the process of resubdividing or the land or territory resubdivided.

H. Article 66B - Land Use §1.02

(a) In this section, "action" means:

(1) The adoption of an ordinance or regulation under:

(i) § 1.00(k) of this article;
(ii) § 1.04(f) of this article; or

(iii) § 4.09 of this article;

(2) A requirement under § 9–505(a)(1) of the Environment Article and § 19(o)(3)(iii) of Article 23A of the Code; and

(3) A required finding under §§ 9–506(a)(1) and 9–507(b)(2) of the Environment Article.

(b) This section applies to the following:

(1) §§ 1.00(k), 1.04(f), and 4.09 of this article;

(2) §§ 9–505(a)(1), 9–506(a)(1), and 9–507(b)(2) of the Environment Article (Water and sewer plan review); and

(3) § 19(o)(3)(iii) of Article 23A of the Code (Annexation plan).

(c) Except as provided in subsection (d) of this section, when a provision in a statute listed under subsection (b) of this section requires that an action be "consistent with" or have "consistency with" a comprehensive plan, the term shall be defined to mean an action taken that will further, and not be contrary to, the following items in the plan:

(1) Policies;

(2) Timing of the implementation of the plan;

(3) Timing of development;

(4) Timing of rezoning;

(5) Development patterns;

(6) Land uses; and

(7) Densities or intensities.

(d) (1) In this subsection, "priority funding area" has the meaning stated in § 5–7B–02 of the State Finance and Procurement Article.

(2) This subsection applies to an action under subsection (a)(1)(ii) and (iii) of this section.

I. Article 66B - Land Use §1.04

(a) A charter county shall enact, adopt, amend, and execute a plan as provided in this section.

(b) (1) When developing a comprehensive plan for a charter county, a planning commission shall include:

(i) A transportation plan element which shall:

1. Propose the most appropriate and desirable patterns for the general location, character, and extent of the channels, routes, and terminals for transportation facilities, and for the circulation of persons and goods on a schedule that extends as far into the future as is reasonable;...

(iii) A water resources plan element that:

1. Identifies drinking water and other water resources that will be adequate for the needs of existing and future development proposed in the land use element of the plan, considering available data provided by the Department of the Environment;

2. Identifies suitable receiving waters and land areas to meet storm water management and wastewater treatment and disposal needs of existing and future development proposed in the land use element of the plan, considering available data provided by the Department of the Environment; and

3. Has been reviewed by the Department of the Environment to determine whether the proposed plan is consistent with the programs and goals of the Department reflected in the general water resources program required under § 5–203 of the Environment Article;

J. Article 66B - Land Use §4.09

On or before July 1, 1997, and subsequently at intervals of no more than 6 years which correspond to the plan revision under § 3.05(b) of this article, a local jurisdiction shall ensure that the implementation of the provisions of the plan that comply with §§ 1.01 and 3.05(a)(4)(vii) and (ix) of this article are achieved through the adoption of applicable zoning ordinances and regulations, planned development ordinances and regulations, subdivision ordinances and regulations, and other land use ordinances and regulations that are consistent with the plan.

K. MD. Environment Code Ann. § 9-659:

(a) (1) The sanitary commission shall connect the water system or sewerage system to any parcel:

(i) Whose owner requests the connection;

(ii) That does not abut a way in which a water pipe or sewer pipe is laid; and

(iii) That is not the subject of a benefit assessment levied under § 9–657 or § 9–658 of this subtitle…

(b) The sanitary commission shall classify the parcel and determine a front–foot charge on the parcel as if the parcel abutted on a way in which a water pipe or sewer pipe is laid.

(c) When a connection is made under this section, the owner of the parcel has the same rights and duties and the district has the same remedies as to the benefit assessment that apply to benefit assessments under §§ 9–657 and 9–658 of this subtitle.

L. MD. Environment Code Ann. § 9-661:

(a) (1) During construction of a water line or a sewer line, the sanitary commission, at its own expense, shall construct a connector to the property line of each parcel that abuts the way in which the water line or sewer line is laid…

(b) When construction on the water line or sewer line is complete, the sanitary commission shall notify each abutting property owner of the completion.

(c) On receipt of the notice of completion, and by a time set by the sanitary commission, each owner of abutting property shall:

(1) Pay the connection charge determined under this section; and

(2) Make appropriate connections of the plumbing system on the property to the connector constructed by the sanitary commission.

M. Town of Keedysville Subdivision Ordinance § 1.02:

The purpose of these regulations are to regulate and control the division of land located within Keedysville in order to promote public health, safety and general welfare of the residents of the Town of Keedysville. The Regulations also implement requirements of the State of Maryland under Article 66B of the Annotated Code of Maryland to:

a) Concentrate development in suitable areas
b) Protect sensitive areas
c) Conserve and reduce the consumption of natural resources

N. Town of Keedysville Subdivision Ordinance § 2.01:

Subdivision Control - It shall be unlawful for the owner of any land that lies within the subdivision control jurisdiction of Keedysville to subdivide any lot, tract, or parcel of land unless and until the following steps are completed.

a.) A plat of such subdivision is made in accordance with the regulations set forth herein;
b.) Approval is secured thereof from the Planning Commission as provided herein; and

No land in a subdivision created after adoption of this ordinance shall be transferred, sold, or offered for sale, nor shall a building permit be issued for a structure thereon until the Final Plat or such subdivision has been recorded in accordance with these regulations and until the improvements required in connection with the subdivision have either been constructed or guaranteed

as here in after provided except that after approval of a Preliminary Plat, an applicant may offer such land for sale provided that the contract of sale shall be conditioned upon the approval and recordation of the Final Plat and that this condition is stated upon the contract of sale.

No plat of any subdivision shall be recorded until it has been approved by the Planning Commission as provided herein and witnessed by the signature of the Chairperson; and the Chairperson shall not sign any plat unless he/she is satisfied that the requirements of these regulations have been complied with.

The applicant shall cause copies of said plat to be recorded in the office of the Clerk of the Circuit Court of Washington County and proof thereof provided to the Town of Keedysville.

O. Town of Keedysville Subdivision Ordinance § 3.01(8)(b)(i):

The developer shall submit a timetable of road construction with the final plat to be approved by the Town Engineer and Development Coordinator. Where such is not shown in the Comprehensive Plan, the arrangement of streets in a subdivision shall either Provide for the continuation or appropriate projection of existing principal streets in surrounding areas; or

P. Town of Keedysville Subdivision Ordinance § 3.01(8)(b)(d):

Where a subdivision abuts or contains an existing or proposed arterial street or railroad right-of-way, the Planning Commission may require marginal access streets at a distance from such right-of-way suitable to the appropriate use of the intervening land, as for park purposes in residential districts or such other treatment as may be necessary for adequate protection of residential properties and to afford separation of through and local traffic. To these ends, the Planning Commission may require the subdivision to be designed so as to limit the number of street intersections and to limit access from abutting properties to arterial streets and highways.

Q. Town of Keedysville Subdivision Ordinance § 3:02:

Street Right-of-Way widths shall not be less than as follows:
Arterial - 80 Feet, Collector - 60 Feet, Minor/Local - 50 Feet, Marginal Access - 50 Feet and Alley - 25 Feet

R. Town of Keedysville Subdivision Ordinance § 3:02(1):

Half streets shall be prohibited, except where essential to the reasonable development of the subdivision in conformity with the other requirements of these regulations and where the Planning Commission finds it will be practicable to require the dedication of the other half when the adjoining property is subdivided. Wherever a has street is adjacent to a tract to be subdivided, the other half of the Street shall be platted within such tract.

S. Town of Keedysville Subdivision Ordinance § 3:02(6):

Proposed streets which are obviously in alignment with others already existing and named shall bear the name of the existing streets duplicate, or be phonetically similar to existing street names, irrespective of the use of the suffix: street, avenue, boulevard, drive, place and court.

T. Town of Keedysville Subdivision Ordinance § 3:02(7):

All Collector and Arterial streets shall be construed to standards approved by the Town Engineer and Planning Commission.

U. Town of Keedysville Subdivision Ordinance § 3.06(2):

Easements across lots or centered on lot lines shall be provided for utilities where necessary and shall be at least twenty-five (25) feet wide.

V. Town of Keedysville Subdivision Ordinance § 8.01:

Purpose In order to provide for the health, safety and welfare of the present and future population of Keedysville, the Planning Commission shall refuse to approve any proposed subdivision when such subdivision would bring about the development of land which is unsuitable for such development due to flooding, lack of drainage, excessive slope, excessive erosive action by water, unstabilized slope or fill, inadequate access or other conditions which may cause danger to life, health, or when the lands involved would in its opinion become unsuitable through the development proposed.

W. Town of Keedysville Subdivision Ordinance § 9.01:

Required Improvements Monuments, utility and street improvements shall be provided by the Subdivider in each new subdivision in accordance with the standards and requirements described in the following schedule:

X. Town of Keedysville Subdivision Ordinance § 9.02:

Public Water and Sewer Systems Connection to a public water distribution system as approved by the Town of Keedysville is required for each lot. Connection to a public sewer system as approved by the Town of Keedysville. Minimum standards for water service shall be provided throughout new subdivisions. A minimum pressure of fifty pounds per square inch (50 PSI) shall be maintained at any house connections. A minimum fire flow at all fire hydrants shall be 1,000 gallons per minute with a residential pressure of twenty pounds per square inch (20 PSI).

Y. Town of Keedysville Subdivision Ordinance § 9.10:

Widening or Realignment of Existing Roads - Where the subdivision borders an existing street and the comprehensive plan indicates plans for realignment or widening of the street that would require reservation of some land of the subdivision, the Planning Commission may require that such areas be shown and marked on the plat "Reserved for Street Realignment (or Widening) Purposes."

CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 8231words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112; Font Times New Roman size Thirteen (13) Point.

/s/ Robert Kline

Robert Kline, Esq.

CERTIFICATE OF FILING AND SEVICE

I HEREBY CERTIFY that on this 23 day of October, 2023, the foregoing Appellant Brief was served via the MDEC system on parties of record, 8 copies of the Appellant Brief were mailed via first class US mail to the Appellate Court of Maryland and 2 copies were mailed via first class US mail to the following counsel and/or parties:

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E-FILED; Washington Circuit Court Clerk
Docket: 12/11/2023 8:01 AM; Submitted: 12/11/2023 8:01 AM
Envelope: 7583121
E-FILED

BRIEF OF APPELLANT

IN THE

APPELLATE COURT

OF MARYLAND

September Term 2023,

No. 883

JUSTIN HOLDER

Appellant

V.

JEFFREY YOUNG

Appellee

Appeal from the Circuit Court of Washington County

The Honorable Andrew F. Wilkinson - C-21-CV-20-371

BRIEF OF APPELLANT JUSTIN HOLDER

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* Citations from Maryland Caselaw In Brief

(ii) **Statutes**

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STATEMENT OF THE CASE

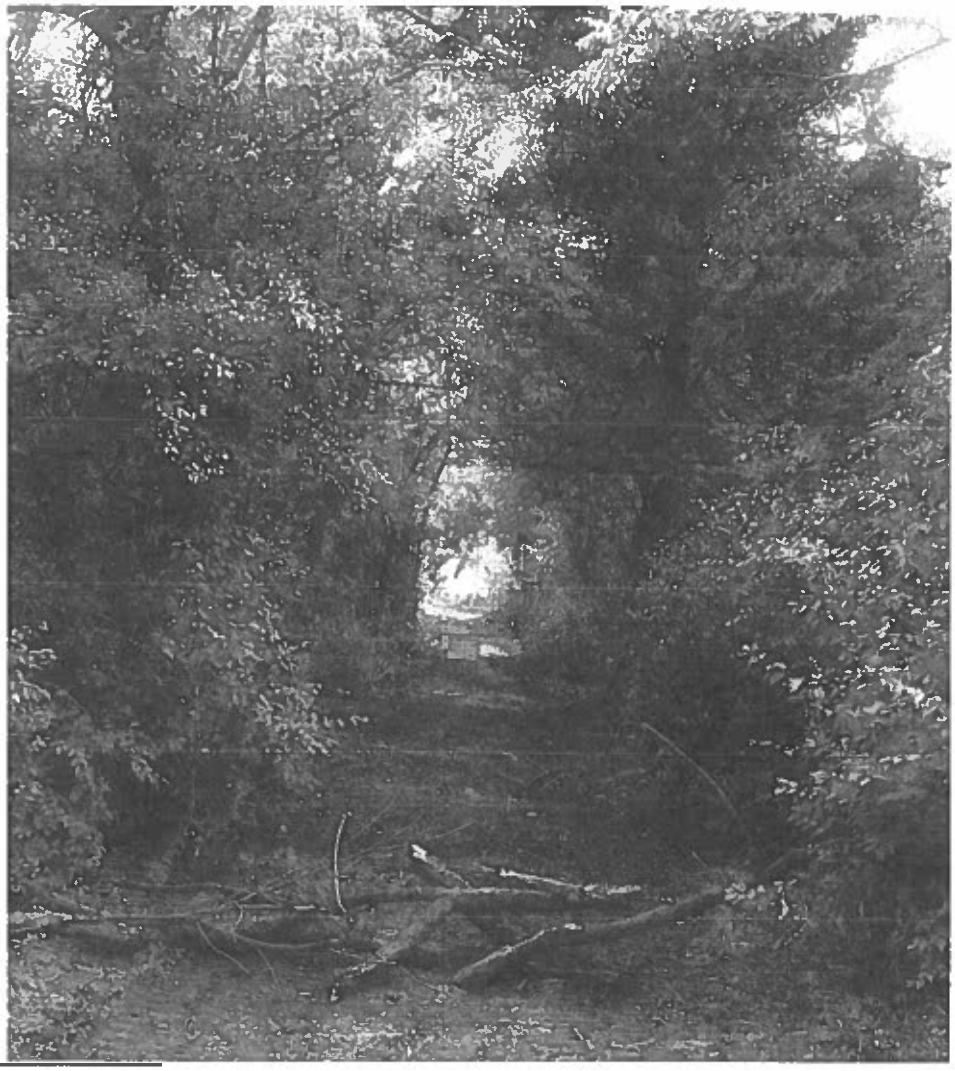
Prior to reviewing Appellant, Justin Holder's ("Mr. Holder") Brief, Mr. Holder would kindly suggest that the Court read Appellant Uncle Eddies brokedown palace LLC's ("Uncle Eddies") Brief, as it provides a more detailed procedural posture.

A. The Dispute over the Public Road begins

On, or about May 29, 2020, Mr. Holder was working and locating stone property markers (E519-521) along what he knew to be a public road, (E509-11) that he had traveled since he was a young boy. (E512) Mr. Holder was working in the public road that was located in between his wife's, ("Mrs. Holder") property, and neighbors Scott and Christine Morral's ("Morral") property. (E518) Maryland Department of Natural Resources officer, David Breakall ("officer Breakall") arrived at the public road, and he and Mr. Holder had a discussion. (E517) After a brief discussion, Officer Breakall advised Mr. Holder he could continue working around the corner, and remove any brush or undergrowth from the public road right of way as Mr. Holder continued to locate the stone property markers. (E519)

Appellee, Jeffery Young, ("Young") also claims property that abuts the public road right of way where Mr. Holder was working. (E1475) Young heard the bobcat and saws Mr. Holder was using from Young's home, which was approximately 800 feet away from the public road right of way. (E63-64) Young jumped on his ATV and immediately rode up to meet Mr. Holder, shortly after Mr. Holder began his work. (*Id.*) Mr. Holder, his agents, Officer Breakall, and Young had a brief conversation about the

public road right of way. (E85-86) Young told Mr. Holder that he believed the public road right of way had been closed, and Mr. Holder disagreed.[1] (E84-86 & E1328) In the short ten (10) or fifteen (15) minute period of Mr. Holder's work, Young explained he had a photograph that depicted the public road right of way as a path wide enough for two (2) people to walk side by side. (E165)



[1] Although Young eventually conceded he was aware the public road right of way passed through the property he claimed, initially in the litigation Young alleged he was unaware a road existed. Young was impeached in deposition(s) and trial regarding his knowledge of the public road right away. (E80-87)

B. <u>Young has conceded the Public road exist, but he thought it was closed.</u>

Young knew Mr. Holder was working on the public road right of way and cleaning up any shrubs and trees so that children in the neighboring developments could use the path just as Mr. Holder did as a boy. (E509-12) Young has conceded that the public road right of way where Mr. Holder was working connects one public place to another public place.[2] Young testified he was aware of a Road to Keedysville that passed through the lands he claims. (E1475) Young testified that he thought the road dead-ended by the metal stakes near the edge of what he claims as his property. (E1328-29) The only competent evidence in the record reflects that Mr. Holder claimed a right to use the public road right of way on May 29, 2020, and Young disputed that use because he believed the road was no longer open. (E84-86) Young conceded the public road right of way exists, he was incorrect that it has been closed.

C. The evidence in the record of the history of the "Road to Keedysville," and <u>its use by General Braddock and George Washington in 1755.</u>

Mr. Holder placed substantial admissible evidence under oath supporting the existence of the public road right of way into the record of this case. (E1059-97) Mr. Holder's historical expert, Ted Ellis, ("Ellis") wrote an entire book about the "Road to Keedysville." (E1368-1430) Ellis describes the origins of the Road to Keedysville as a horse and bridle path from Park Hall by way of a 1760 petition to the court. (E1369)

Mr. Holder included the most pertinent sections of Ellis' book in his expert designation, along with the complete book as an exhibit constituting Ellis' opinion:

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[2] *See* Young's "Opposition to Petition for Certiorari" p. 2 n.1 (E1479)